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# Park district faces \$40,000 fine from U.S. EPA

## Agency says OPD failed to obtain permit

By Roger Matile

The U.S. Environmental Protection Agency has notified the Oswegoland Park District they are liable for a \$40,000 fine because of the park district's failure to seek a fill permit from the U.S. Army Corps of Engineers.

The U.S. EPA, in a letter to the park district received Jan. 6, told park officials their failure to obtain an individual after-the-fact fill permit for a low spot at Saw Wee Kee Park south of Oswego had resulted in levying the fine.

Park officials, however, said they were mystified by the EPA's actions, since they were in the midst of complying with the agencies most recent compliance orders when the notification of the fine arrived.

Saw Wee Kee Park is located on a portion of an old gravel mine bordered by the Burlington Northern Railroad right-of-way and the Fox River south of Oswego. The area in dispute by the EPA was one of the numerous low man-made depressions left over from former gravel mining operations which the park district had filled in to make a larger horse trailer parking lot. Park district director Bert Gray said the existing parking lot is too small for the larger numbers of area horse fanciers who are now using the park's five miles of trails. As a result, the district decided to enlarge the existing lot by filling the adjacent low spot.

Last year, the EPA notified the park district they were guilty of illegally filling an area deemed a "water of the United States." Park officials disputed the claim, since the area in question was man-made, dry most of the year, and was only wet during the spring and after

heavy rains.

However, the park district agreed to work with the EPA to seek a remedy to the problem. Since questions had been raised about the possibility of unclear fill, or even the possibility of hazardous materials being buried in the low spot, the EPA ordered that the fill be sampled before anything else was done.

The U.S. EPA's chief of wetlands regulation, Charles Orzechoske, said Tuesday that park neighbors had alleged in sworn statements they had seen hazardous materials of various kinds buried in the depression.

As a result, on May 27, representatives of the U.S. and Illinois EPAs and the Oswegoland Park District met at Saw Wee Kee to see the area trenched by a backhoe. On June 2, Orzechoske wrote to the park district informing them that despite the charges of park neighbors, the fill material was found to be acceptable, containing less than one percent of unacceptable material.

In addition, Orzechoske ordered the park district to (1) "immediately effect a general clean up of the unauthorized fill site, including removal and appropriate disposal of exposed wood, metal, and plastic debris and to create an even surface grade up to the existing line of fill, including mulching and seeding exposed soil; and (2) to "immediately apply" for a U.S. Army Corps of Engineers individual after-the-fact fill permit for the site.

Gray said the park district immediately contacted the U.S. Army Corps of Engineers at Rock Island, but found the file on the site was still in EPA hands. Without the information in the file, the Corps could not discuss the proposed permit.

Under an order by the state attorney general, the park district is not allowed to do anything at Saw Wee Kee unless prior permission is obtained from the attorney general's office. Therefore, in an effort to work on the other part of the EPA's demands, on July 17, John Wyeth, the park district's attorney, contacted

the Illinois Attorney General's environmental control division to inform the attorney general the park district intended to remove the debris and clean up the site in accord with the U.S. EPA's orders. Following the clean-up, and after the EPA approved it, the park district planned to seek the after-the-fact fill permit, Gray said.

However, on July 20, Assistant Illinois Attorney General for Environmental Control Kevin B. Hynes informed Wyeth the park district had to provide the attorney general's office and the Illinois EPA with a seven day advanced notice before any clean-up work could begin. Furthermore, a representative of the IEPA had to be present when any work was done at the site. Hynes also wrote the park district's plan to reseed a portion of the area, also in accord with the U.S. EPA's orders was "premature." Hynes threatened the park district with filing a formal complaint if the district did not do a proper clean-up of the site.

On Sept. 14, Gray met with the IEPA's Mark Retzlaff and Hynes at the site, and the two agreed clean-up work could commence. Work was scheduled to begin Oct. 21, but an IEPA observer was unavailable, and so it was postponed.

On Oct. 28, the debris was finally removed and the site graded in accord with the U.S. EPA's orders.

On Dec. 1, the park district received a letter from Orzechoske informing them that the U.S. EPA had approved the clean-up of the proposed parking lot site. "This clean up included removal of unacceptable fill material (dead trees, plastic debris, and metallic debris), regrading of the fill, and placement of gravel over exposed concrete chunks," Orzechoske wrote. "The U.S. EPA accepts this clean up."

Orzechoske cautioned the park district, however, that the site could not be considered free of violations of the U.S. Clean Water Act until the after-the-fact (ATF) fill permit had been issued by the U.S. Army Corps of Engineers.

Orzechoske directed the park district to submit the permit application to the U.S. EPA first before sending it along to the Corps so that "the Corps receives an ATF application which they will be able to process and potentially approve."

Orzechoske also warned the park district that if the park district sought to seek Corps authorization of a permit, a draft application package had to be submitted for EPA review within 90 days of the park district's Dec. 1 receipt of Orzechoske's letter.

Gray said the park district had been in contact with the Corps, and that the Corps' requirements for a fill permit differed with those the EPA said the Corps required. Instead of the more costly individual after-the-fact permit, Gray said the Corps recommended the park district obtain a nationwide permit, the usual procedure for areas of less than 10 acres. The area filled at Saw Wee Kee is less than a quarter acre.

On Jan. 5, Edward V. Walsh of Sachnoff & Weaver, Ltd. of Chicago, specialists in environmental law retained to represent the park district, wrote to Orzechoske, informing him the Corps recommended the park district apply for Nationwide Permit No. 26 for the site. In addition, the firm enclosed a copy of the

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permit application and a packet including all papers required by the Corps of Engineers for the application.

The day after Walsh sent his information to the U.S. EPA and the Corps of Engineers, the park district received a letter from Dale S. Bryson, director of the U.S. EPA's water division, informing the park district they were being fined

\$40,000 for noncompliance with EPA directives on the area filled.

The formal complaint against the park district said the amount of the fine, which could have been as much as \$125,000, was based on the alleged facts in the complaint, plus "the nature, circumstances, extent and gravity of the violations alleged, and after consideration of the Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit resulting from the violation, and such other matters as justice may require."

"To have the notice of a \$40,000 fine arrive out of the blue, after the park district has done everything the EPA asked and submitted the permit application is beyond understanding," Gray said this week.

Contacted at his Chicago office, Orzechoske said this week it may not matter how hard the park district works to get into compliance with the Clean Water Act. He said a fine could be levied even if the district successfully obtains the after-the-fact Army Corps of Engineers permit and assures the area is filled with

environmentally safe materials.

Orzechoske said one reason the EPA is continuing its prosecution of the park district is because the park district had already once applied for a permit from the Corps of Engineers and had been turned down.

Gray categorically denied the district had ever applied for such a permit before this month.

"That's absolutely wrong," he said of Orzechoske's charge. "We've never sent papers; we've never sent an application before this month. We've talked with the Corps for months on this, but we did not apply for the permit until we were assured the fill had been approved."

He indicated the EPA is willing to negotiate with the park district concerning the amount of the fine, but said the chances of the district having to pay some amount in fines is "very conceivable," since, from the EPA's viewpoint the district violated the law by filling the man-made depression in the first place. Working to get in compliance with EPA regulations on such matters would have no effect on whether the district would be fined or not. He said the EPA would fine the park district even if they removed all the fill placed in the depression and returned it to the way it was before it was filled.

In his Jan. 6 letter, Bryson noted the park district has the right to request a hearing regarding the alleged violations of the Clean Water Act. Gray said Tuesday the park district plans to request such a hearing within the 20 day limit set by law.